IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.61/2007.

1. Luis Filipe Menezes,
major, age 34 years, married, son of Arnaldo Paulo Menezes, resident of 3rd floor, Aleluia Menezes Bldg. No.2, Opp. M.E.S. Inspection Camp, Next to T.V. Tower, Altinho, Panjim-Goa.
2. Mr. Thomas Menezes,
major, aged 56 years, married, businessman, resident of Opp. Saldanha Business Centre, Rua St. Tome, Behind Head Post Office, Panaji-Goa. ..... Appellants.

V/s.

1. Mr. Elliot Aleluia Manuel Menezes, H.No.265/1, 1st Floor, Aleluia Menezes Bldg, No.3, Opp. M.E.S. Inspection Camp, Next to T.V. Tower, Altinho, Panjim-Goa

2. Mr. Francis Menezes,
H.No. 269, Vivenda Fatima, Near Nirmala Institute, Altinho, Panjim-Goa.

3. Millennium Auto,
a partnership firm having its principal place of business at Menezes House, Murda, Merces, Goa.

4. The Manager,
Goa Urban Co-op. Bank Ltd,
Dr. A. B. Road, Panaji, Goa.

5. The Manager,
ING Vysya Bank Ltd., 12/115/1, Gr. Flr. Neurencar Chambers, M. G. Road, Panaji, Goa

6. The Manager,
Union Bank of India, Rua de Ourem,
Panaji-Goa. ..... Respondents.

Mr. A. F. Diniz and Mr. E. Furtado, Advocates for the applicants.
Mr. S. D. Lotlikar, Sr. Advocate with Mr. R. Menezes, Advocate for the respondents No.1 and 3.
Mr. S. Chopdekar, Advocate holding for Mr. R. G. Ramani, Advocate. for respondent No.4.
Mr. M. S. Joshi, Advocate for the respondent No.6.

CORAM : R.S. MOHITE, J.

DATE : SEPTEMBER 14, 2007.

ORAL JUDGMENT :

Heard both sides. Admit. By consent heard forthwith.

2. This appeal has been filed by the original defendants No.4 and 5 who claim to be the erstwhile partners of the original plaintiff No.3 firm. The defendants No.1, 2 and 3 in the suit are the Banks. The facts indicate that on a request made by the original defendants No.4 and 5, the defendants No.1, 2 and 3 Bank stopped payment to the plaintiff and, therefore, the plaintiff filed a suit for direction to the Banks to permit operation of the account by the plaintiffs. It appears from the record that on such an application, an exparte order was passed by the Court on 11.5.07 directing the defendants No.1, 2 and 3 to allow the plaintiff No.3 to operate the account till the application for temporary injunction was finally heard and decided on merits. It appears that

summons were issued to the defendants No.4 and 5 only on 16.5.07 and they appeared before the trial Court on 24.5.07 through their Advocate. The application made by the plaintiffs is still pending. When this appeal came up before this Court on 10.8.07, the Advocate appearing for the original plaintiffs made a statement on behalf of his clients that he will not operate the account of the partnership firm with the original defendants No.1, 2 and 3 till the next date. This position continued by my order dated 16.8.07.

3. In my view, the trial Court ought not to have passed an exparte order permitting one of the partners to operate the account. The consequence of such an order could have been that the entire amount in the account could have been taken away by some of the partners of the firm. My attention is drawn to the fact that subsequently, on 28.5.07, the Court recorded a statement made by the Advocate for the original plaintiff No.3 that the operation of the account would be for the purpose stated in para 21 of the plaint.

4. It is the case of the defendants No.4 and 5 that the partnership firm stands dissolved. If this being the case, the Court ought to have taken into consideration the contentions of the defendants No.4 and 5. In the circumstances, in my view, it is desirable that the Court should first find out

whether the partnership is actually dissolved and if it is found that it is in fact dissolved, consider the rights of the parties in the light of Section 47 of the Indian Partnership Act, 1932.

5. It appears that the matter is pending before the trial Court for arguments on temporary injunction. This appeal is disposed off with a direction to the trial Court to decide the said application made by the plaintiffs for grant of temporary injunction, within a period of three weeks from the date of receipt of writ of this Court.

In the meanwhile, the accounts with the defendants No.1, 2 and 3 will not be operated by the original plaintiff No.3, except for the purpose of payment of statutory dues. It is made clear that the cheques will be issued by the Banks only in the names of the statutory authorities. The defendants No.1, 2 and 3 will issues cheques on the basis of the bills of the statutory authorities to be furnished by the plaintiff No.3. The appeal is disposed of accordingly. Copy expedited.

R.S. MOHITE, J.

ssm